

§ 1.6041-2

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105(d) are required to be reported in returns of information under this section.

(5) *Notional principal contracts.* Except as provided in paragraphs (b)(5)(i) and (ii) of this section, amounts paid after December 31, 2000, with respect to notional principal contracts referred to in § 1.863-7 or 1.988-2(e) to persons who are not described in § 1.6049-4(c)(1)(ii) are required to be reported in returns of information under this section. The amount required to be reported under this paragraph (d)(5) is limited to the amount of cash paid from the notional principal contract as described in § 1.446-3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of § 1.446-3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see § 1.6049-5(b)(15)). See § 1.6041-4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, § 1.1461-1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of § 1.6049-5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See § 1.6049-4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in § 1.6049-4(f)(4).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in § 1.6049-5(e)) by a non-U.S. payor or a non-U.S. middleman.

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in § 1.6049-5(e)) by a payor that has no actual knowledge that the payee is a U.S. person, and the payor is—

(A) A U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business); or

(B) A foreign branch of a U.S. bank. See § 1.6049-5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

(e) *Payment made in medium other than cash.* If any payment required to be reported on Form 1099 is made in property other than money, the fair market value of the property at the time of payment is the amount to be included on such form.

(f) *When payment deemed made.* For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(g) *Payments made by the United States or a State.* Information returns on:

(1) Forms 1096 and 1099 and

(2) Forms W-3 and W-2 (when made under the provisions of § 1.6041-2)

of payments made by the United States or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, shall be made by the officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of such payments or by the officer or employee appropriately designated to make such returns.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 6628, 27 FR 12794, Dec. 28, 1962; T.D. 6888, 31 FR 9205, July 6, 1966; T.D. 7284, 38 FR 20827, Aug. 3, 1973; T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 7888, 48 FR 17587, Apr. 25, 1983; T.D. 8458, 57 FR 61313, Dec. 24, 1992; T.D. 8734, 62 FR 53471, Oct. 14, 1997; T.D. 8804, 64 FR 11378, Mar. 9, 1999; T.D. 8881, 65 FR 32205, May 22, 2000]

§ 1.6041-2 Return of information as to payments to employees.

(a)(1) *In general.* Wages, as defined in section 3401, paid to an employee are required to be reported on Form W-2. See section 6011 and the Employment Tax Regulations thereunder. All other payments of compensation, including the cash value of payments made in

any medium other than cash, to an employee by his employer in the course of the trade or business of the employer must also be reported on Form W-2 if the total of such payments and the amount of the employee's wages (as defined in section 3401), if any, required to be reported on Form W-2 aggregates \$600 or more in a calendar year. For example, if a payment of \$700 was made to an employee and \$400 thereof represents wages subject to withholding under section 3402 and the remaining \$300 represents compensation not subject to withholding, such wages and compensation must both be reported on Form W-2. A separate Form W-2 shall be furnished for each employee for whom a return must be made. At the election of the employer, components of amounts required to be reported on Form W-2 pursuant to the provisions of this subparagraph may be reported on more than one Form W-2.

(2) *Transmittal form.* The transmittal form for a return on Form W-2 made pursuant to the provisions of subparagraph (1) of this paragraph shall be Form W-3. In a case where an employer must file a Form W-3 under this paragraph and also under § 31.6011(a)-4 or § 31.6011(a)-5 of this chapter (Employment Tax Regulations), the Form W-3 filed under such § 31.6011(a)-4 or § 31.6011(a)-5 shall also be used as the transmittal form for a return on Form W-2 made pursuant to the provisions of this paragraph.

(3) *Time for filing*—(i) *General rule.* In a case where an employer must file Forms W-3 and W-2 under this paragraph and also under § 31.6011(a)-4 or § 31.6011(a)-5 of this chapter (Employment Tax Regulations), the time for filing such forms under this paragraph shall be the same as the time (including extensions thereof) for filing such forms under § 31.6011(a)-4 or § 31.6011(a)-5.

(ii) *Exception.* In a case where an employer is not required to file Forms W-3 and W-2 under § 31.6011(a)-4 or § 31.6011(a)-5 of this chapter, returns on Forms W-3 and W-2 required under this paragraph (a) for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year.

(iii) *Cross reference.* For extensions of time for filing returns, see section 6081 and the regulations thereunder.

(4) *Place for filing.* The returns on Forms W-3 and W-2 required under this paragraph shall be filed pursuant to the rules contained in § 31.6091-1 of this chapter (Employment Tax Regulations), relating to the place for filing certain returns.

(b) *Distributions under employees' trust or plan.* (1) Amounts which are:

(i) Distributed or made available to a beneficiary, and to which section 402 (relating to employees' trusts) or section 403 (relating to employee annuity plans) applies, or

(ii) Described in section 72(m)(3)(B), shall be reported on Forms 1096 and 1099 to the extent such amounts are includible in the gross income of such beneficiary if the amounts so includible aggregate \$600 or more in any calendar year. In addition, every trust described in section 501(c)(17) which makes one or more payments (including separation and sick and accident benefits) totaling \$600 or more in 1 year to an individual must file an annual information return on Form 1096, accompanied by a statement on Form 1099, for each such individual. Payments made by an employer or a person other than the trustee of the trust should not be considered in determining whether the \$600 minimum has been paid by the trustee. The provisions of this subparagraph shall not be applicable to payments of supplemental unemployment compensation benefits made after December 31, 1970, which are treated as if they were wages for purposes of section 3401(a). Such amounts are required to be reported on Forms W-3 and W-2. See paragraph (b)(14) of § 31.3401(a)-1 of this chapter (Employment Tax Regulations).

(2) Any amount with respect to which a statement is required by § 1.6047-1, relating to employee retirement plans covering owner-employees, shall not be included in amounts required to be reported under section 6041.

(c) *Payments to foreign persons.* See § 1.6041-4 for reporting exemptions regarding payments to foreign persons.

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See § 1.6049-5(d) for determining whether a payment is made to a foreign person.

[T.D. 7284, 38 FR 20827, Aug. 3, 1973, as amended by T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8734, 62 FR 53472, Oct. 14, 1997; T.D. 8895, 65 FR 50406, Aug. 18, 2000]

§ 1.6041-2T Return of information as to payments to employees (temporary).

(a)(1) through (4) [Reserved]

(5) *Statement for employees.* An employer that is required under § 1.6041-2(a) to file Form W-2 with respect to an employee is also required under section 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

(b) and (c). For further guidance, see § 1.6041-2(b) and (c).

[T.D. 8942, 66 FR 10193, Feb. 14, 2001]

§ 1.6041-3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041-1 and 1.6041-2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041-4 for reporting exemptions regarding payments to foreign persons.

(a) Payments of income required to be reported on Forms 1120-S, 941, W-2, and W-3 (however, see § 1.6041-2(a) with respect to Forms W-2 and W-3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

(c) Payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

(d) Payments of rent made to real estate agents (but the agent is subject to the requirements of paragraph (a)(1)(ii) and (2)(ii) of § 1.6041-1).

(e) Payments representing earned income for services rendered without the United States made to a citizen of the United States, if it is reasonable to believe that such amounts will be excluded from gross income under the provisions of section 911 and the regulations thereunder.

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see § 1.6031-1).

(g) Payments of commissions to general agents by fire insurance companies or other companies insuring property, except when specifically directed by the Commissioner to be filed.

(h)(1) *In general.* Payments made under reimbursement or other expense allowance arrangements that meet the requirements of section 62(c) of the Code and § 1.62-2, that do not exceed the amount of the expenses substantiated (i.e., amounts which are treated as paid under an accountable plan), and that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989.

(2) *Transition rule.* Payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after January 1, 1989, but prior to July 1, 1990, to the extent that the employee is required to account (within the meaning of the term “account” as set forth in § 1.162-17(b)(4) or 1.274-5T(f)(4), whichever is applicable) and does so account to the payor for such expenses, provided the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of this section, as in effect for payments made under reimbursement or other expense allowance arrangements that were received by an employee before January 1, 1989, with respect to expenses paid or incurred before January 1, 1989, will constitute such reasonable good faith compliance. In no event, however, will reasonable good faith compliance exist if a payor fails to report payments made under an arrangement (other than a per diem or mileage allowance type arrangement) under which an employee is not required to substantiate expenses paid or incurred or is not required to return amounts in excess of the substantiated expenses.

(i) Payments of interest on obligations of the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing (but for